

State of California
Regional Water Quality Control Board
San Diego Region

**SUPPLEMENTAL
EXECUTIVE OFFICER SUMMARY REPORT
June 29, 2005**

ITEM: 7

SUBJECT: National Steel and Shipbuilding Company (NASSCO), Tentative Cleanup and Abatement Order No. R9-2005-0126. The Regional Board will rule on NASSCO's Motion to Compel Production of Evidence and Renewed Motion for Continuance of Public Workshop. (*David Barker*)

PURPOSE: The Regional Board will consider and rule on: (1) NASSCO's renewed request for a continuance of the June 29, 2005 workshop on tentative Cleanup and Abatement Order (CAO) No. R9-2005-0126, (2) NASSCO's motion to compel the production of evidence that the San Diego Regional Water Quality Control Board (Regional Board) is relying upon for tentative CAO No. R9-2005-0126, (3) NASSCO's request that the June 29th workshop be conducted without the presence of Regional Board members in the event that the evidence is not provided to NASSCO.

PUBLIC NOTICE: Public Notice of this item was provided in the June 29, 2005 Regional Board Meeting Agenda Notice which was posted on the Regional Board website and mailed to interested persons on Friday, June 10, 2005.

DISCUSSION: On April 29, 2005, the Regional Board issued tentative CAO No. R9-2005-0126 to NASSCO and other responsible parties concerning the elevated levels of pollutants in the San Diego Bay bottom marine sediment within and adjacent to the NASSCO and Southwest Marine, Inc. leaseholds (collectively referred to as "Shipyard Sediment Site"). The Regional Board scheduled a public workshop on June 1, 2005 to obtain public input on what persons should be held accountable for cleanup of the marine sediments, as well as the appropriate level and extent of sediment cleanup. Furthermore, the Regional Board scheduled a public hearing on June 29, 2005 to receive oral and written testimony on the tentative CAO. On May 12, 2005, NASSCO filed a Motion for Continuance requesting that the Regional Board continue the June 1, 2005 workshop and June 29, 2005 public hearing. The Regional

Board subsequently rescheduled the public workshop to June 29, 2005 and postponed the public hearing.

On June 1, 2005 NASSCO filed a Motion to Compel Production of Evidence and a Renewed Motion for Continuance of the June 29, 2005 Public Workshop.

KEY ISSUES:

1. NASSCO claims that holding the June 1 workshop and the June 29 public hearing prior to the Regional Board issuing the technical report would deprive NASSCO and other responsible parties of their due process rights. (Supporting Document 2)
2. NASSCO claims that by issuing the technical report after the June 29 public hearing, the Regional Board will thwart the very purpose of *Topanga v. County of Los Angeles*, 11 Cal.3d 506, 514 (1974). (Supporting Document 2)
3. NASSCO claims that by not issuing the technical report prior to the June 1 workshop and June 29 public hearing, the process creates a very real risk of precluding Regional Board members from considering all evidence in the record prior to issuing the final CAO. (Supporting Document 2)
4. NASSCO claims that the June 29 workshop in fact has become an adjudicatory proceeding. (Supporting Document 5)
5. NASSCO claims that the Regional Board has completely abrogated its responsibility to ensure full and fair adjudicatory proceedings. (Supporting Document 5)
 - (a) The Regional Board must provide evidence supporting the CAO prior to any adjudicatory proceeding.
 - (b) Any workshop conducted by the Regional Board must be protective of NASSCO's statutory and due process rights.

LEGAL CONCERNS:

see Key Issues

SUPPORTING
DOCUMENTS:

- 6. Letter Dated June 15, 2005 from Kelly Richardson of Latham & Watkins LLP.**

RECOMMENDATION:

Consider and rule on NASSCO's motions.